

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**SPECIAL BENCH**  
**COURT - 2**

ITEM No.301  
C.P. (IB)/66(AHM)2024

**Order under Section 7 of IBC, 2016**

**IN THE MATTER OF:**

Zep Infratech Limited

.....Applicant

BVM Finance Private Limited

.....Respondent

**Order delivered on: 08/02/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

Dr. Velamur Govindan Venkata Chalapathy, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

**-Sd-**  
**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD SPECIAL BENCH  
COURT NO. II**

**CP(IB) No.66/7/AHM/2024**

*(Filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of **M/s. BVM Finance Private Limited***

**M/s. Zep Infratech Ltd. (Under CIRP)**

CIN: U74899GJ1994PLC050189

Through its Resolution Professional:

Mr. Nimai Gautam Shah,  
605-606-607, Silver Oaks,  
Nr. Mahalaxmi Char Rasta,  
Paladi, Ahmedabad-380007.

... Applicant/Financial Creditor

**Vesus**

**M/s. BVM Finance Private Limited**

CIN: U65910GJ1994PTC022164

Having its registered address at:

Block No.457, Village: Chhatral,  
Taluka: Kalol, District: Gandhinagar,  
Gujarat - 382729.

... Respondent/Corporate Debtor

**Order pronounced on 08.02.2024**

**CORAM:**

**SHAMMI KHAN, HON'BLE MEMBER (J)**

**DR. V. G. VENKATA CHALAPATHY, HON'BLE MEMBER (T)**

**APPEARANCE:**

For the Applicant : Ms. Hirva Dave, Advocate for  
Mr. Jaimin R. Dave, Advocate  
For the Respondent : Mr. Arjun Sheth, Advocate

**ORDER**

**Per: BENCH**

1. This is an Application filed on 29.01.2024 by **M/s. Zep Infratech Limited** through its Resolution Professional (herein after referred to as Applicant/**Financial Creditor**) against **M/s. BVM Finance Private Limited** (herein after referred to as the Respondent/**Corporate Debtor**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as "**IRP**") and declare the moratorium for having defaulted payment of its outstanding dues **Rs.9,10,26,000/-** including interest. The date of default as stated to be 30.06.2022.
2. From Part-I of the application, it is seen that the Applicant/Financial Creditor was incorporated on 18.02.1994 having CIN No. U74899GJ1994PLC050189. From Part-II of the application it is seen that the Respondent/Corporate Debtor is one M/s. BVM Finance

Private Limited having CIN No. U65910GJ1994PTC022164. The Respondent/Corporate Debtor was incorporated on 31.05.1994 and having its registered office at Block No.457, Village: Chhatral, Taluka: Kalol, District: Gandhinagar, Gujarat - 382729.

3. From Part-III of the application, it is seen that Applicant/Financial Creditor has nominated **Mr. Sachin Dinkar Bhattbhatt** (Registration No: IBBI/IPA-003/IP-N000138/2017-2018/11514, having address: A-604, Royal Edifice, B/h Iscon Heights, Kunal Cross Road, Gotri- Laxmipura Road, Gotri, Vadodara, Gujarat-390023. (**e-mail:** Sachin.Bhattbhatt@gmail.com) as the Interim Resolution Professional. He has filed his written communication annexed with the Application as **Annexure-D** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
4. Part-IV of the application reveals that the Applicant/Financial Creditor has granted a sum of **Rs.7,58,55,000/-** to the Respondent/Corporate Debtor on various dates between **31.05.2017 to 31.08.2017**. The proof of disbursement is filed being A/c statement of Yes Bank & ICICI Bank which is annexed as **Annexure-M** with the application – Page 92 - 110.

5. It is submitted by Applicant/Financial Creditor that the loan was originally sanctioned and disbursed by Sintex Power Limited whose name was changed to Sixvents Power and Engineering Limited with effect from 31.03.2015. The said Sixvents Power and Engineering Limited was amalgamated with the Applicant/Financial Creditor vide order of this Tribunal dated 05.06.2018. Accordingly, all the assets and liabilities of Sixvents Power and Engineering Limited including the loan receivable from the Respondent/Corporate Debtor stood transferred in the name of the Applicant/Financial Creditor. The Applicant/Financial Creditor has annexed the copies of the amalgamation order dated 05.06.2018 passed by this Tribunal and the master data of M/s. Sixvents Power and Engineering Limited as **Annexure-E (Colly)** to the present Application.
6. It is stated that after the said amalgamation of Sixvents Power and Engineering Limited with the Applicant/Financial Creditor, on 01.07.2018 the Applicant/Financial Creditor and the Respondent/Corporate Debtor had entered into Memorandum of Understanding cum Loan Agreement; wherein, the Respondent/Corporate Debtor had agreed to pay the loan amount of **Rs.7,58,55,000/-** along with premium of 20% on or before 30.06.2022. A copy of MOU dated 01.07.2018 is annexed as **Annexure-F**. It is said that the Respondent/Corporate Debtor has failed to

repay the aforementioned admitted dues on or before 30.06.2022.

7. The Applicant/Financial Creditor was admitted into CIRP by this Adjudicating Authority vide order dated 31.07.2023 and Mr. Nimai Gautam Shah was appointed as an IRP of the Applicant/Financial Creditor.
8. Upon verification of the books of accounts as well as records of the Applicant/Financial Creditor, the IRP acquired knowledge about the transaction of the amount of the Respondent/Corporate Debtor and the Applicant/Financial Creditor. Accordingly, on 29.11.2023, the IRP addressed a letter to the Respondent/Corporate Debtor for the repayment of the said loan of **Rs.7,58,55,000/-** with the premium of 20% aggregating to Rs.9,10,26,000/-. A copy of such letter is annexed as **Annexure-H**. The Respondent/Corporate Debtor, despite the receipt of the letter has failed to repay the loan.
9. The fourth meeting of the Committee of Creditor of Zep Infratech Limited (the Applicant/Financial Creditor) was held on 05.12.2023 wherein, the CoC unanimously resolved to initiate the proceedings under Section 7 of the I.B.C., 2016 against the Respondent/Corporate Debtor in the present application.

10. The Applicant/Financial Creditor, on 09.12.2023 issued a legal notice through its advocate in course with Clause No. 6(a) of the MOU dated 01.07.2018 calling upon the Respondent/Corporate Debtor to repay the outstanding amount of Rs.9,10,26,000/- within 10 days of receipt of the said legal notice. A copy of the said legal notice served dated 09.12.2023 is annexed as **Annexure-J** to the present Application.

11. It is stated that in its reply of the said legal notice, the Respondent/Corporate Debtor had addressed an E-mail on 23.12.2023 to the advocate of the Applicant/Financial Creditor duly admitted the dues and stated that:

***“We are in receipt of legal notice dated 09.12.2023 for recovery of loan amount of Rs.7,58,55,000/- along with premium at the rate of 20% aggregating to Rs.9,10,26,000/- due and payable to Zep Infratech Limited on 30 June 2022.*”**

***In this regard we would like to acknowledge outstanding dues and would like to inform you that currently we are facing financial difficulties, and we are not in position to repay the debts of Zep Infratech Limited.”***

A copy of email replies dated 23.12.2023 is attached as **Annexure-K**. Under the circumstances the present application is filed.

12. The date of default is stated to be 30.06.2022.

13. The record of default with NeSL is attached and marked as **Annexure-L** issued by National E-Governance Services Limited (“**NeSL**”) being record debt and default with status “Authenticated”.
14. The Respondent/ Corporate Debtor appeared through Counsel on receipt of advance copy of the Application and filed Reply through an affidavit dated 06.02.2024 affirmed by one Mr. Amit K. Parikh, said to be the director of the Respondent/Corporate Debtor. Under para-2 of the said affidavit, the Respondent/Corporate Debtor has stated as under:  
***“that the respondent admits to having defaulted in repaying the financial debt in question.”***
15. We have heard the counsels appearing on behalf of the parties and perused the documents. It is an admitted position from both the sides that an aggregate sum of **Rs.7,58,55,000/-** was given as loan from the Applicant/Financial Creditor to the Respondent/Corporate Debtor in **between 31.05.2017 to 31.08.2017**. The disbursement is proved through A/c statement of Yes Bank & ICICI Bank which are annexed as **Annexure-M** of the application – Page 92 - 110).

16. The existence of Memorandum of Understanding cum Loan Agreement dated 01.07.2018 is not denied by the Respondent/Corporate Debtor. According to the Memorandum of Understanding, the loan was repayable on **30.06.2022** and as such the present application is within the limitation period and is also not hit by the provisions of Section 10(A) of the Insolvency and Bankruptcy Code, 2016. Moreover, the Respondent/Corporate Debtor, through its reply has admitted the debt and the default.
17. The amount claimed in default is more than rupees one crore. The NESL record of default (Form D) reveals that the default is for a sum or **Rs.9,10,26,000/-** and it is duly authenticated which is remained payable to the Applicant/Financial Creditor.
18. We have examined the eligibility of the Resolution Professional who is conducting the process of CIRP of the Applicant/Financial Creditor and on behalf of the Applicant/Financial Creditor who has filed this application to recover the debt dues from the Respondent/Corporate Debtor. The Hon'ble NCLAT has in its Company Appeal (AT)(Insolvency) No. 283 of 2018 vide order dated 7 Dec 2018 in ***Mandhana Industries Limited v Instyle Exports Private Limited*** examined the matter relating to the RP filing a section 7 application and stated that such an action turns the

role to that of a Applicant/Financial Creditor and this enables to recover the debt and is the right course of action for managing the affairs of the financially stressed company, which should be done with the approval of the CoC.

19. The other issue is whether Applicant/Financial Creditor had borrowed funds with Time Value of Money. In this application the Resolution Professional has stated that a Premium on the amount due was charged and to be paid. Keeping in view of the interest of the Resolution Professional and decision of the COC to pursue the recovery by filing an application before this bench, and there is no insolvency proceeding initiated till date against the Respondent/Corporate Debtor the same is deserved to be allowed.
20. Similarly, in the matter of ***Innoventive Industries Ltd. Vs. ICICI Bank and Another***, Civil Appeal Nos.8337-38 of 2017, decided on August 31, 2017 Hon'ble Supreme Court has held as under:-

*“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such*

form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **The moment the adjudicating authority is satisfied that a default**

**has occurred, the application must be admitted unless it is incomplete**, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise”

21. In view of the facts as stated *supra* and also in view of the ‘financial debt’ is proved by the Applicant/Financial Creditor and the ‘default’ being committed on the part of the Respondent/Corporate Debtor of an amount of more

than Rs.1.00 Crore, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Respondent/Corporate Debtor.

22. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

23. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

(i) The Respondent/Corporate Debtor **M/s. BVM Finance Private Limited** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the Code.

(ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

a. *The institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

- b. *Transferring, encumbering, alienating or disposing of by the Respondent/Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
  - c. *Any action to foreclose, recover or enforce any security interest created by the Respondent/Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
  - d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent/Corporate Debtor.*
  - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this

Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the Respondent/Corporate Debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Respondent/Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The Respondent/Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Respondent/Corporate Debtor.
- (v) As proposed by the Applicant/Financial Creditor, we appoint **Mr. Sachin Dinkar Bhattbhatt**, having Registration No. IBBI/IPA-003/IP-N000138/ 2017-2018/11514, having address: A-604, Royal Edifice, B/h Iscon Heights, Kunal Cross Road, Gotri- Laxmipura Road, Gotri, Vadodara, Gujarat-390023. **(e-mail: Sachin.Bhattbhatt@gmail.com)** under section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP)**. He shall conduct the Corporate Insolvency Process as per the

Insolvency and Bankruptcy Code, 2016 read with Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Respondent/Corporate Debtor, its promoters, or any other person associated with the management of the Respondent/Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Respondent/Corporate Debtor, its promoters, or any other person required to assist or cooperate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the Respondent/Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard,

and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the Respondent/Corporate Debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.
- (xi) We direct the Applicant/Financial Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses. Necessary approval of COC of Applicant/Financial Creditor to be obtained in this regard who will bear the cost of the expenses till the amount is recovered.
- (xii) The Registry is directed to communicate this order to the Applicant/Financial Creditor, corporate debtor, and to the Interim Resolution

Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Respondent/Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

24. Accordingly, this Application **CP(IB) No.66/7/AHM/2024** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-sd-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

AT